Testimony of Lorray S.C. Brown
On Behalf of the Michigan Poverty Law Program (MPLP)

Senate Committee on Reforms, Restructuring and Reinventing
House Bills 5390 & 5391

Chairman Jansen and members of the Senate Reforms, Restructuring and Reinventing Committee, thank you for the opportunity to testify regarding House Bills 5390 & 5391. I am Lorray Brown, the statewide consumer law attorney at Michigan Poverty Law Program. Michigan Poverty Law Program (MPLP) is the statewide support office for legal services programs. MPLP advocates on behalf of the state's low-income population on issues in the areas of low-income housing, family law, consumer protections, and foreclosure prevention.

At a time when Michigan is rated one of the worst states whose debt collection laws reflect an indifference to struggling consumers, this legislature is considering bills that will continue to allow debt collectors to push its families into poverty.[1] Changing the law to make it easier for debt collectors to garnish workers' wages for an indefinite period is a step in the wrong direction. The Michigan Poverty Law Poverty opposes these bills.

HB 5390

HB 5390 eliminates the expiration period for the effectiveness for a writ of garnishment for wages. Under current law and Michigan court rules, a writ of garnishment of wages remains in effect for 182 days. It is noted that under current court rules, the debt collectors can seek a second writ after the first expires. MCR 3.101(B)(1)(b). Therefore, the debt collector can always get a second writ of garnishment when the 182 days expire.

Eliminating an expiration period eliminates an opportunity for the consumer to defend or object to a continuing garnishment. Currently, when the consumer receives a notice that a writ of garnishment has been served, the consumer has an opportunity to defend against it in court. Eliminating the filing of a second writ would eliminate the opportunity to defend especially if there are issues as to the accurate accounting of the balance owed.

Although HB 5390 states that the debt collector should provide a statement of the balance every 6 months, there is nothing in place to allow the consumer an opportunity to challenge the accounting. Further, there is nothing in place to ensure that the debt collector provides the statement every 6 months. In fact, there is no incentive for the debt collector to comply with this

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[1] *No Fresh Start: How States Let Debt Collectors Push Families Into Poverty* (National Consumer Law Center's Report)(October 2013). This is a Report on the exemption laws of the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The Report states:

> **Worst states:** At the opposite end of the scale are several states whose exemption Laws reflect indifference to struggling debtors. These states allow debt collectors to seize nearly everything a debtor owns, even the minimal items necessary for the debtor to continue working and providing for a family. Alabama, Delaware, Kentucky, and ***Michigan*** are the worst and rate an "F." (***emphasis added***).

obligation since the bill still allows the garnishment to occur even if the debt collector fails to send the statement.

Moreover, eliminating an expiration period reduces court supervision of garnishments. There are substantial risks in reducing court supervision of garnishments. A few years ago, the Forty-Sixth District Court and other District judges identified numerous instances of problems in accounting for judgment collections. Court forms now require more information for judges when reviewing garnishment requests. If no judge sees this information after the initial writ, there will be no review of it.

Accordingly, MPLP opposes HB 5390 that will allow the garnishing of workers' wages for an indefinite period. Under this system there are no procedures to stop the garnishment when the judgment is paid and importantly, there is the possibility of wrongful garnishment.

HB 5390 & 5391

HB 5390 and HB 5391 both allow an employer to deduct from an employee's wages without written consent of the employee the amount the employer is liable to the creditor for the employer's failure. If the employer (the garnishee) fails to comply with the writ of garnishment by not timely filing the disclosure form, the employer (garnishee) can be liable to the debt collector for that failure. However, under HB 5390 and HB 5391, the employer can then deduct that amount from the employee's wages.

MPLP has serious concerns with these provisions. It is apparent that these bills are being proposed to address a problem where the garnishees are not complying with their obligations in the garnishment process. However, allowing a garnishee to deduct its judgment from the employee's wages seems unfair and counterproductive. This provision essentially eliminates the garnishee's incentive to comply with its obligations under the law. Allowing the garnishee to recover its judgment from the employee will have no practical effect on the apparent problem of the garnishee's noncompliance.

It is also unfair to the employee to allow his wages to be deducted for the garnishee's failure. So not only will the employee's wages be deducted for an indefinite period, but it is likely that employee's wages will be deducted twice for an indefinite period. So a low-income employee, making minimum wages, will have 25% of his earnings withheld under the federal law and under this bill another 15% can be deducted because of the garnishee's failure. This bill, not only is unfair, but will no doubt push low-income families into poverty.

MPLP opposes both bills. Thank you.

Prepared for Senate Reforms, Restructuring and Reinventing Committee
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